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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-197983

May 22, 1981

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Mr. Jon Heller
International Organizer
Office and Professional Employees
236 Daylight Building
Knoxville, Tennessee 37902

Dear Mr. Heller:

Reference is made to your letter dated March 27, 1981, concerning Mr. John A. Thompson's claim of entitlement to grade and pay retention as the result of a reduction in force (RIF) due to the closing of a Department of Defense installation. You have asked for reconsideration of our decision B-197983, October 21, 1980, denying Mr. Thompson's claim on the basis that he was not placed in the lower-grade position as a result of RIF procedures. In so holding, we noted that Mr. Thompson was not subject to a RIF notice at the time he obtained the downgraded position with another agency. As a basis for requesting reconsideration, you have submitted a letter dated March 28, 1977, indicating that all civilian employees of the Missile Site Radar Branch were to be off the rolls by September 30, 1977.

The letter of March 28, 1977, indicates that Mr. Thompson was notified of the impending RIF prior to his departure on April 10, 1977, for a downgraded position with the Department of Energy. Given this notice, you suggest that it is an overly restrictive interpretation of the regulations to deny grade and pay retention simply because he departed voluntarily before the formal RIF notice was issued on June 30, 1977.

While we do not question your view that Mr. Thompson acted prudently under the circumstances, he was not placed in a lower-grade position as a result of RIF procedures but rather as a voluntary act on his part. Grade and pay retention under 5 U.S.C. §§ 5362 and 5363 (Supp. II, 1978) extend to an employee who "is placed as a result of reduction in force procedures" in a lower-grade position. Thus, its benefits are limited to cases where the agency responsible for the RIF offers or places the employee in

[Entitlement to Grade and Pay Retention]

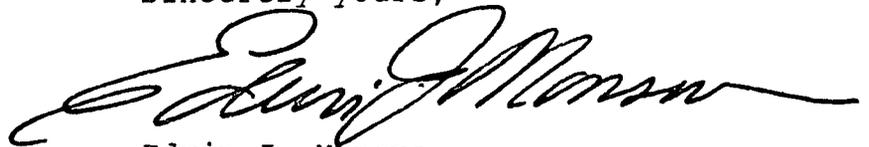
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the lower-grade position under applicable procedures. As your letter has pointed out, Mr. Thompson chose not to risk separation or assignment to an unsatisfactory position by waiting for formal written RIF notices to issue on June 30, 1977. Although it is a completely understandable decision on his part, particularly in view of the March 28, 1977 letter, these circumstances do not entitle him to grade and pay retention authorized by the statutes cited above. In this regard we point out that even an employee who has received formal notification of a RIF may not qualify for grade and pay retention if, like Mr. Thompson, he obtains a lower-grade position outside of established RIF procedures and on his own initiative.

Accordingly, your letter presents no basis for reconsideration of the decision in Mr. Thompson's case.

Sincerely yours,

A handwritten signature in cursive script, reading "Edwin J. Monsma". The signature is written in dark ink and is positioned above the typed name and title.

Edwin J. Monsma
Assistant General Counsel.